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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,447	12/30/2003	Raymond Liberatore	10605-2	4968

7590

05/26/2005

Factor & Lake, LTD.
1327 W. Washington Blvd.
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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,447

Applicant(s)

LIBERATORE, RAYMOND

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 9-15, 17-28, 30 and 32-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16, 29 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. In the reference to the prior application made on page 1 of the specification, the filing date of the prior Application No. 10/628,097, filed July 28, 2003, is incorrect. Also, for benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications and the current status of all nonprovisional parent applications.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was

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unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) **mentioned** in the description: (A) **21** (note line 18 on page 11); (B) **17a** (note line 23 on page 14); (C) **F** (note line 1 on page 16 and line 12 on page 17); (D) **P** (note line 12 on page 16); (E) **313** (note line 15 on page 16); (F) **415** (note lines 2-3 on page 17); (G) **807** (note the paragraph beginning on line 6 of page 18); and (H) **1004** (note line 5 on page 19). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "34" has been used to designate both a spreader flap or blade (note Fig. 5 and line 4 on page 12) and a nozzle entrance (note Fig. 8 and line 9 on page 12). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “112a” has been used to designate both a bore (note Fig. 19 and line 18 on page 13) and a nozzle outlet (note Fig. 19 and line 23 on page 13 and line 2 on page 14). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters “426” and “415” have both been used to designate the threaded end of the container 401 (note the paragraph beginning on line 20 of page 16). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) **not mentioned** in the description: **61b** (note Fig. 15). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the

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specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to because: (A) in Fig. 4, the angle of the device makes it difficult to determine the disposition of spreader 17 with respect to the nozzle 11; (B) in Fig. 6, the projecting line disposed between 190 and 188 should be deleted; (C) Fig. 15 is inconsistent with Figs. 16 and 17 in identifying the protrusion 61a; (D) in Fig. 23, the two individual drawing portions should be bracketed together to indicate that they constitute a single entity; (E) in Fig. 25, the two individual drawing portions should be bracketed together to indicate that they constitute a single entity; (F) in Fig. 26, it is unclear what is being represented by the unmarked box portion; (G) in Fig. 26, the two individual drawing portions should either be bracketed together to indicate that they constitute a single entity or be separately numbered; (H) in Fig. 28b, the two individual drawing portions should either be bracketed together to indicate that they constitute a single entity or be separately numbered; (I) in Fig. 29a, the two individual drawing portions should either be bracketed together to indicate that they constitute a single entity or be separately numbered; and (J) in Fig. 31, the legend is too far away from the actual figure to clearly indicate what constitutes the figure. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing, should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where

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necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to under 37 CFR 1.84(h)(5) because Figs. 18 and 30 show modified forms of construction in the same view. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheets should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

9. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fitting having threads, as called for by claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended”. If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

10. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as “Annotated Sheets” and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Specification

11. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract **should be in narrative form** and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims**, such as “means” and “said”, **should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, “The disclosure concerns”, “The disclosure defined by this invention”, “The disclosure describes”, etc.

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12. The abstract of the disclosure is objected to because: (A) it is not in narrative form; and (B) it uses the form used in patent claims, i.e., a single sentence. Correction is required. See MPEP § 608.01(b).

13. The following informalities in the specification are noted: (A) on page 10, line 8, “and” should be deleted; (B) on page 10, the periods on lines 10, 11, 13, 15 and 17 should be changed to semi-colons; (C) on page 10, line 19, the period should be changed to --; and--; (D) on page 11, line 15, a period should be inserted after “flexible”; (E) on page 12, the sentence beginning on line 5 should read --FIGURE 6 shows a cap 190 having a recess 188a that receives the nozzle snap-ring retention 188 disposed at the nozzle end 32a--; (F) on page 16, line 16, “be” should read --been--; (G) on page 16, line 17, --a-- should be inserted after “of”; (H) on page 18, line 11, “crew” should read --screw--; and (I) on page 18, line 13, “mechanism, is 804 pulled” should read --mechanism 804 is pulled--.

Claim Objections

14. The numbering of claims is not in accordance with 37 CFR 1.75(f) which requires that if there are several claims, they shall be numbered consecutively in Arabic numerals. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims include claim 10a and two (2) claim 41s.

Misnumbered claims 10a-42 have been renumbered as claims 11-44.

Claim Rejections - 35 USC § 112

15. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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16. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 16 calls for “the nozzle and spreader surface are positioned to maximize the visibility of the material being extruded”. However, the specification fails to support or describe or even suggest how the nozzle and spreader surface are positioned with respect to each other so as “to maximize the visibility of the material being extruded”.

17. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

18. Claims 1-8 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

19. In regard to claims 1, 5, 7 and 8, the “dispenser” (on lines 1-2 and 6-8 of claim 1) is inferentially included as part of the claimed combination of elements rendering the claims indefinite as to whether the combination of a dispenser and a dispensing nozzle/spreader surface or the subcombination of a dispensing nozzle/spreader surface is intended to be claimed. Should applicant intend the “dispenser” to be a positive element of the claimed combination, then positive structural antecedent basis should be provided therefore. If not, the terminology “adapted to be” could be used.

20. Claim 4 contains a term lacking proper antecedent basis. The claim recites the limitation “the spreader” in line 1. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 16 contains a term lacking proper antecedent basis. The claim recites the limitation “the material being extruded” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

23. Claims 1-3, 7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez. Rodriguez discloses a combination having all the claimed features including a dispensing nozzle (constituted by the head 1) associated with a dispenser (constituted by receptacle 7) to dispense flowable material (constituted by the wax contained in the receptacle 7), and a spreader surface (constituted by spatula 11) associated with the nozzle 1 (note Figs. 3-5) whereby the dispenser 7 may be manipulated to cause the spreader surface 11 to spread material dispensed via the nozzle 1. With respect to claim 2, Rodriguez also discloses that the spreader surface 11 has the form of a spatula surface attached to the dispenser 7. With respect to claim 3, Rodriguez further discloses that the spreader surface 11 is proximate the nozzle 1 (note Figs. 3-5). With regard to claim 7, Rodriguez additionally discloses that the nozzle 1 has a fitting (constituted by ridge 4) to attach it to the dispenser 7 (note from line 63 in col. 2 to line 3 in col. 3). With respect to claim 16, Rodriguez also discloses that the nozzle 1 and spreader surface 11 are positioned to maximize the visibility of the material being extruded or dispensed (note lines 40-45 in col. 1, lines 17-23 in col. 2 and lines 51-61 in col. 3).

24. Claims 1-8, 16, 29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Le Brooy. Le Brooy discloses a combination having all the claimed features including a dispensing nozzle 5 associated with a dispenser (constituted by the containers 15 or 21, note lines 28-35 and 51-52 in col. 2) to dispense flowable material (constituted by the food product in the container 15), and a spreader surface 10 (note lines 14-15 in col. 2) associated with the nozzle 5 whereby the dispenser 15 may be manipulated to cause the spreader surface 10 to spread material dispensed via the nozzle 5 (note lines 46-50 in col. 2). With respect to claims 2 and 4, Le Brooy also discloses that the spreader surface 10 has the form of a blade or spatula surface attached to

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the dispenser 15 (note Fig. 1). With respect to claim 3, Le Brooy further discloses that the spreader surface 10 is proximate the nozzle 5 (note Figs. 1 and 2). With respect to claims 4 and 6, it is considered that the nozzle 5 and spreader surface 10 of Le Brooy are inherently flexible since they are used to spread the food product on a slice of bread 11 (note Fig. 1 and lines 46-50 in col. 2) which could be easily torn if a rigid or inflexible nozzle/spreader surface were used. With regard to claim 5, Le Brooy also discloses that the dispenser 15 contains edible material (note lines 9-15 in col. 1 and lines 28-33 in col. 2). With regard to claim 7, Le Brooy additionally discloses that the nozzle 5 has a fitting (constituted by cap portion 6) to attach it to the dispenser 7 (note from line 63 in col. 2 to line 3 in col. 3). With regard to claim 8, Le Brooy further discloses that the fitting 6 comprises threads 7 (note Fig. 5 and lines 5-7 in col. 2). With respect to claim 16, Le Brooy additionally discloses that the nozzle 5 and spreader surface 10 are positioned to maximize the visibility of the material being extruded (note Fig. 1). With respect to claim 29, Le Brooy also discloses a spreader having all the claimed features including a container (constituted by containers 15 or 21) having a closed end (at its far end, note Figs. 1 and 2) and an open end 17 and containing a spreadable food item (note lines 9-15 in col. 1 and lines 28-33 in col. 2), and a nozzle 5 mounted at the open end 17 of the container 15 (note Figs. 1 and 2) and having an opening (at 14, note Fig. 5) in fluid communication with the open end 17 of the container 15, 21 such that the spreadable food item can flow through the opening. With respect to claim 31, Le Brooy also discloses that the nozzle 5 is in the shape of a spatula (note Figs. 1, 2, 4 and 5).

25. Claims 1-6, 16, 29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Robe. Robe discloses a combination having all the claimed features including a dispensing nozzle (constituted by the throat orifice 13, note Figs. 1-4) associated with a dispenser (constituted by the pouch 11, note Figs. 2-4) to dispense flowable material (note lines 37-38 in col. 1), and a spreader surface 17 (note lines 10-12 in col. 4) associated with the nozzle 13 whereby the dispenser 11 may be manipulated to cause the spreader surface 17 to spread material dispensed via the nozzle 13 (note lines 22-28 in col. 4). With respect to claims 2 and 4, Robe

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also discloses that the spreader surface 17 has the form of a blade or spatula surface attached to the dispenser 11 (note Fig. 4). With respect to claim 3, Robe further discloses that the spreader surface 17 is proximate the nozzle 13 (note Figs. 2 and 4). With respect to claims 4 and 6, Robe additionally discloses that the nozzle 13 and spreader surface 17 are flexible (note lines 59-73 in col. 3). With regard to claim 5, Robe also discloses that the dispenser 11 contains edible material (note lines 28-31 in col. 4). With respect to claim 16, Robe further discloses that the nozzle 13 and spreader surface 17 are positioned to maximize the visibility of the material being extruded (note Figs. 2 and 4, and lines 22-28 in col. 4). With respect to claim 29, Robe also discloses a spreader having all the claimed features including a container (constituted by the pouch 11) having a closed end (at its far end, note Figs. 2-4) and an open end (formed by the portions 34 and 36, note Fig. 3) and containing a spreadable food item (note lines 28-31 in col. 4), and a nozzle 13 mounted at the open end of the container 11 (note Figs. 2 and 3) and having an opening (note Fig. 3) in fluid communication with the open end of the container 11 such that the spreadable food item can flow through the opening. With respect to claim 31, Robe also discloses that the nozzle 13 (at the portion 16) is in the shape of a spatula (note Fig. 4).

26. Claims 1-3, 5, 7, 8, 29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Lobdell. With regard to claim 1, Lobdell discloses a combination having all the claimed features including a dispensing nozzle (constituted by channel 19, note Fig. 3) associated with a dispenser (constituted by container 26) to dispense flowable material (constituted by the flowable food product contained in the container 26), and a spreader surface (constituted by blade 11) associated with the nozzle (note Figs. 3-5) whereby the dispenser 26 may be manipulated to cause the spreader surface 11 to spread material dispensed via the nozzle (note lines 63-67 in col. 1). With respect to claim 2, Lobdell also discloses that the spreader surface 11 has the form of a spatula surface attached to the dispenser 26 (note Figs. 1, 2 and 6). With respect to claim 3, Lobdell further discloses that the spreader surface 11 is proximate the nozzle (note Figs. 1 and 3). With regard to claim 7, Lobdell further discloses that the nozzle has a fitting (constituted by base extremity 12, note Figs. 1-3) to attach it to the dispenser 26 (note line 62-65 in col. 2 and

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lines 32-36 in col. 3). With regard to claim 8, Lobdell additionally discloses that the fitting (constituted by base extremity 12, note Figs. 1-3) comprises threads. With respect to claim 29, Lobdell discloses a spreader having all the claimed features including a container (constituted by container 26) having a closed end (at its far end) and an open end (at collar 27) and containing a spreadable food item (note lines 54-56 in col. 1), and a nozzle (constituted by channel 19, note Fig. 3) mounted at the open end of the container 26 (note Fig. 6) and having an opening 20 (note Fig. 1) in fluid communication with the open end of the container 26 such that the spreadable food item can flow through the opening 20. With respect to claim 31, Lobdell also discloses that the nozzle is in the shape of a spatula (note Figs. 1, 2 and 6).

Election/Restrictions

27. Claims 9-15, 17-28, 30 and 32-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions and nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on January 21, 2005.

28. Applicant's election with traverse of the restriction requirement in the reply filed on January 21, 2005 is acknowledged. The traversal is on the ground(s) that all the pending claims are drawn to an apparatus having a nozzle wherein a spreadable food is dispensed therefrom. This is not found persuasive because only claim 5 specifically calls for a spreadable food to be dispensed. Claims 29, 32, 37, 40 and 44 merely call for the container to be capable of holding a food item.

The requirement is still deemed proper and is therefore made FINAL.

Conclusion

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen J. Prunner whose telephone number is 571-272-4894.

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30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

5/25/25


Kathleen J. Prunner

May 10, 2005